

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:10cv110**

PHYLLIS W. PENLAND,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security**

Defendant.

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ORDER

THIS MATTER is before the Court on the parties' cross Motions for Summary Judgment [Docs. 10 and 12]; the Magistrate Judge's Memorandum and Recommendation [Doc. 15] regarding the disposition of those motions; and the Defendant's Objections to the Memorandum and Recommendation [Doc. 16].

After careful consideration of the Magistrate Judge's Recommendation [Doc. 15] and the Defendant's Objections thereto [Doc. 16], the Court finds that the Magistrate Judge's proposed findings of fact are correct and that his proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby overrules the Defendant's Objections and accepts the Magistrate Judge's Recommendation that the Commissioner's

decision in this case be reversed pursuant to sentence four of 42 U.S.C. § 405(g) and remanded to the Commissioner for further proceedings consistent with this Order.

IT IS, THEREFORE, ORDERED that the Defendant's Objections to the Memorandum and Recommendation [Doc. 16] are **OVERRULED** and the Magistrate Judge's Memorandum and Recommendation [Doc. 15] is hereby **ACCEPTED**.

IT IS FURTHER ORDERED that, for the reasons stated in the Memorandum and Recommendation, the Plaintiff's Motion for Summary Judgment [Doc. 10] is **GRANTED** to the extent that the Plaintiff seeks reversal of the Commissioner's decision denying her disability benefits. To any extent that the Plaintiff seeks an immediate award of benefits, the Plaintiff's Motion [Doc. 10] is **DENIED**.

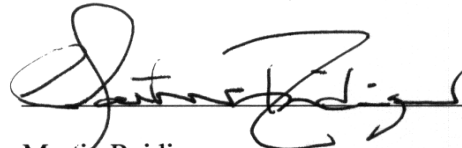
IT IS FURTHER ORDERED that the Defendant's Motion for Summary Judgment [Doc. 12] is **DENIED**.

Pursuant to the power of this Court to enter a judgment affirming, modifying or reversing the decision of the Commissioner under Sentence Four of 42 U.S.C. § 405(g), the decision of the Commissioner is **REVERSED**, and this case is hereby **REMANDED** to the Commissioner for further administrative action consistent herewith.

A judgment shall be entered simultaneously herewith.

IT IS SO ORDERED.

Signed: December 13, 2011


Martin Reidinger
United States District Judge

